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HEALTH (1952) Department.

MS SERIES.

G.O. NO. 2213 H

Dated 10 — 7 — 52

Closed
mr
Supdt

[Despatch Abstract.]

Suit — Mangalore — South Kanara Dt — Owner of the DMOs residence — Suit filed before the Rent Controller Defence Sanctioned

Medical Department.

From

Dr. P.Arunachalam, MD., MRCP., TDD(Wales) DMR (Lond).,
Director of Medical Services, Madras 6.

To

The Secretary to Government, Health Department, Madras.

Ref. 96499 W/51 dated 14 --6--52.

Sub:- Buildings- District Medical Officer's office- Shifting of. S. Kanara

Ref:- Correspondence resting with this office letter 96499 W/51 dated 10--5--52. Ref. in Ly. - C.No 19310 1/2/52

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In continuation of this office letter cited I am to state that the District Medical Officer, South Kanara has asked for permission to engage the Government Pleader to defend the case filed by the owner of the building before the Rent Controller. As the shifting of the office was done with good intention I recommend that the permission asked for may kindly be accorded at an early date.

Yours faithfully,

P. Arunachalam 14/6

for Director of Medical Services.

Prv. 10.6.

2

Health Deptt (Ht2)

Suit. Mangalore, South Kanara Dt. Govt. of the D Nos residence. Suit filed before the Rent Controller.

Defence. Sanctioned.

From the DRCS No 96499/W/51 & 14.6.52.

Order/No. 2213 Health & 10 7 52

Sanction is accorded to the defence of the State of Madras in the case filed before the Rent Controller by the owner of the building taken on lease for use as the residence of the DRCO, South Kanara, for the recovery of enhanced rent for the building for the period ~~from~~ during which ~~it was~~ a portion of it was occupied by the office of the DRCO.

2. The DRCS is requested to report to the Govt. in due course, the result of the case.

MM 23.6.52

VR 25/6/52

SRK 26 6 52

To:

The DRCS 27/6/52

AG. (Thro Fin)

Govt. Pleader, Mangalore

Medical Department.

From

Dr. P. Arunachalam, MD., MRCP., TDD(Wales) DMR (Lond).,
Director of Medical Services, Madras 6.

To

The Secretary to Government, Health Department, Madras.

Ref. 96499 W/51 dated 9.8.52.

Sir,

Sub: Buildings- Office of the District Medical officer, South Kanara- shifting to a new building.

Ref: Correspondence resting with this office letter 96499 W/51 dated 6.8.52.

In continuation of this office letter cited I forward herewith a copy of the judgement of the Rent Controller in the case for the information of Government.

ASSISTANT SECRETARY 14 AUG 1952 HEALTH DEPARTMENT

Yours faithfully,

for Director of Medical Services.

Prv. 11.8

Copy of proceedings of the Rent Controller, Mangalore:

Present: Sri P.S.Thimmappa Shetty, B.A.,
H.R.C.O.P.7/52 dated 30.6.52

Between:

Edwin D' Souza, B.A., B.L.,
Retired Income tax officer,
Mangalore. Petitioner.

and

Sri S.G.Adinarayana Raju, MBBS.,
District Medical officer, Mangalore. Respondent.

ORDER.

The petitioner, Sri Edwin D' Souza, retired Incometax Officer, Mangalore filed a petition against the respondent under section 4 of the Madras (Lease and Rent Control Act) 1949. In the petition, the petitioner contended as follows:

1. He stated that his residential building No-50/231, Hostel Road, Mangalore was rented out to the successive Medical Officers by the Rent Controller, Mangalore at a monthly rental of Rs. 85/-per mensum and that rent was not fair rent. He also stated that when he was at Madras he came to know that the respondent had converted the residential building into a non residential building by housing the office of the District Medical officer in a portion of this building and that, therefore a higher rent of Rs.125/- must be paid for the building per mensem. He also quoted the rent that was prevailing in respect of two of the houses of Dr.D' Souza and one house of Mr. M.K.Nambiar which are fetching a rental of Rs.200/-,150/- and 200/- respectively, although the said buildings, are similarly situated and are similar in dimension etc.

2. The respondent took time by addressing the superiors for legal assistance and finally he filed a counter before me on 3.4.52 in which he contended that shifting of the office of the District Medical Officer S.K. to a portion of the premises in question is a temporary affair and there was already a move to shift the office to a convenient place in the Wenlock Hospital, and the arrangements made to hold the office in the scheduled building was only a make-up-affair and that the request of the petitioner for enhancement of rent on account of the office being shifted there cannot be a ground for an increase. He further stated that the rent of Rs.85/- was fixed in 1949 and that under section 4 of the Act increase over the rent of 1949 cannot be in excess of 25% and that the scheduled building was not rented out till it was occupied by the District Medical officer and that the petitioner had not cause for any enhancement of rent in this particular case, as no addition or alteration was made to the building after it was occupied by the respondent. In his counter dated 29.5.52 he further stated that by the shifting of the office, the respondent had not affected the scheduled building and that the residential building had not been changed by that occupation. He also stated that the office building was never shifted to a building fetching Rs.150/- and it was actually located in the hospital building fetching a rent of Rs.10/- permensem and finally stated that the request of the petitioner for an enhanced rent of Rs.125 for the period when the office was located in the scheduled building was strange as no addition was made to the building, in fact, he stated that no white washing was done to the building for the past one year and that there was no cause for demanding enhanced rent.

3. On behalf of the petitioner P.W.1 Mr. A.A.Saldanaha, a neighbour and Mr. Fernandes, a clerk of the Collector's office who also resided in the neighbourhood, were examined. They stated that the garden existed arround the scheduled building alone will fetch a rent of Rs. 150/- per year and that similar buildings as referred to by the petitioner were fetching the rents of Rs.150/- to 200/- and that the trees in those garden were excluded and that the repondent had taken his office to scheduled building for some time and if this building were to be let out for non residential purpose it would fetch a rent of at

(p.t.o)

least of Rs. 125/

4. On behalf of the respondent, the respondent himself was examined and he deposed that in the interest of speedy construction of the portion of the Wenlock Hospital building he had to shift part of his office to his house ~~office~~ so that the work of reconstruction may be hurried up and that three clerks were working at his residence in three rooms set apart for the purpose and that he had reported the matter to his superior and had obtained permission for shifting of the office as a temporary measure and the Executive Engineer had inspected the area had apportioned the rent between the house and the office portion at the ratio of Rs.10/ to 15/- and so far final orders have not been received from the Government on the payment of this rate. He stated that as a District Officer he can take his office to his residence and that was never converted into a non-residential building and that no sort of damage was caused to the building and that the entire arrangement was purely a temporary one, and therefore represente that the petitioner had no cause for any enhancement of rent. He also stated that he cannot afford to maintain the garden and was willing to release it to the petitioner on proper deduction from the rent and stated that the kitchen portion was not in good repair and no white;washing was done and (that the kitchen portion was not in good repairs and no white-washing was done and) that the trees are all old and their capacity to yield waslow.

( ) omit

5. Let me now discuss the evidence let in this case with reference to the petition filed by the petitioner and his contention. The points for consideration are -(1) whether the rental of Rs.85/- now collected from the respondent for the premises including the garden is adequate having regard to the rentsprevailing at the present moment in Mangalore town and in the vicinity and having regard also to the fact that the District Medical officer was enjoying the usufructs of fairly extensive garden containing fruit trees.

(2) Whether the shifting of a portion of the office of the respondent to the scheduled building amounted to the use of the building for non-residential purposes with consequence damage to premises and property and whether on that score the petitioner is entitled for any higher rent. The petition in this case is under Section 4 of the Rent Control Act,1949 The petitioner who is the land-lord of the premises wants this Court to fix a fair rent after holding the enquiry. On behalf of the petitioner as already stated two witness have been examined. These witnesses have not given any evidence before the Court of the prevailing rates of rent in the locality for the same or similar accommodation in similar circumstances during the 12 months prior to First April 1940 as laid down under Section 4 (1) of the Act. The petitioner has not proved that the buildings referred to in his petition namely two buildings of late Dr. D' Souza and one building of Sri M.K.Nambiar were let out before First Apri,1940-. P.W.1.and 2 have merely sworn that these buildings were getting such high rents. These statements do not serve any purpose as these buildings according to P.W are not in the same street or similarly circumstanced. In the absence of proof that these buildings had such a rent on such a date prior to 1940 as laid down under Section 4 (1) (a), it is not possible to compare the prevailing rent to those buildings to arrive at a fair rent and with reference the scheduled building . According P.W.1 the property tax of the scheduled building for the half year is only Rs.26.13.9. P.W.1 who owns a house which is on the opposite side of this building with a road in the middle is paying the property tax of Rs.45/- for his building and according to P.W.1, his houses would fetch only a rent of Rs.45/-when the property tax paid by him for the halfyear is Rs.45/-. The petitioner has not proved the land value with reference to the property tax assessment book of the Mangalore Municipality relating to the period mentioned in Clause 1 of Section 4 (a). The petitioner has also not proved when the scheduled building was constructed. Evidently it was there even before First April 1940. It is notproved tat what the rental of the building was in April 1940 and what the fair rent ought to be now. The oral evidence of P.Ws 1 and 2 that the rent fetching now is not adequate having regard to the nature of the building and an extensive garden and its usufructs cannot be accepted, without material facts to prove the case as laid down

(p.t.o)

under Section 4 (3) (ii) of the Act. I therefore, see no ground to interfere with the existing rent of Rs.35/- which is already fixed in this case. The respondent also in his counter and deposition has stated that no addition or improvement was made to the building after it was taken on rent and that in fact P.W.1 who was in charge of the building and who is a immediate neighbour stated there were many gaps in the compound wall and pit whole of the kitchen was leaking and the house had not been white washed for the last two to three years and trees are old and comparatively yield is low and no alteration has been done and that no damage was done to the scheduled building by the repondent by holding his office in the building. I therefore hold there are no materials before this Court to enhance the rent in this case.

6. The evidence of the Respondent goes to show that he was occupying the scheduled building and after sometime there was great necessity to shift the office building urgently on account of demolition of the office portion of the building for the extension of the Hospital and in the interest of speedy work of the extension he reported to the Director of Medical Services that the office building could be shifted to any rented building or it shold beaccommodated in the scheduled building which is big enough to accommodate the office with the residence of the respondent. Vide R.X.P1. It is further seen that the building portion of the office was actually shifted to the new building on 6.11.1951 Vide R.X.P6 and the Executive Engineer fixed the rent for the office portion at Rs.15/-per month vide Rx.P10. However so far the respondent has not received the proportionate rent of this portion and he has taken back the office portion to the Wenlock Hospital itself on 15.5.52. In this case the building was to fetch a rent of Rs.35/-per month including ~~including~~ the garden and in apportioning the rent of Rs.15/-for office portion and Rs.20/-and for the residential portion by the respondent. The Executive Engineer has not taken into consider the rent that was to be calculated for the garden portion. P.W.1 and 2 depose that if the garden is let out it will fetch a rental of Rs.100/-per year. i.e.12.8.0 per month. However the District Medical officer has said that the trees are all old and that he was not getting any material benefit out of it and that he was willing to surrender them provided proportionate reduction is given to him out of the rent. The learned vakil for the respondent represented that he could not say anything on that point in this petition, the petitioner is away and hence that matter cannot be adjudged in this case. It it now known whether the respondent would be getting back the proportionate rent at Rs.15/- for the period of occupation of the office. In case the Government sanctions this amount I consider it is reasonable that the respondent should pay at the rate of Rs.12-8-0 per month for the period of occupation of the premises by the office till the period of its closure as no account of the garden was taken while apportioning the rent of the building between the office portion and residence. However it is purely an emergency measure and the respondent had stated that even otherwise he has a right to hold his office at his residence and only three clerks were working. I consider that there was no necessity for the respondent to take ~~as~~ the permission of the petitioner for taking a portion of the building as an emergency measure and that the consent of the petitioner was not necessary in this case. While I do not allow the petition for a fair rent as already observed I order that in case the respondent gets the rental from Government at Rs.15/- per month, he shall pay at the rate of Rs.12.8.0 per month to the petitioner for the period the office was held in a portion of the scheduled building.

The parties will bear their own costs.

Dictated to shortand Typist, Typewritten, corrected by me and pronounced in open Court this 30th Day of June 1952.

Sd. P.S.Thimmappa Shetty

Rent Controller,
Mangalore.

SCHEDULE.

Residential house situated in Bunt's Hostel Road with No.50/231 of Mangalore town and taluk with garden thereto.

True copy.

Sd/- [illegible] 1/8/52 /true copy/

for Director of Medical Services

Rent Controller,
Mangalore.

Health Deptt (H2)

Please see Govt. No. 2213 H dt. 10-7-52 and the judgement on pp 3-5 ante A/3-4
No action seems called for. The papers may be filed with the Govt. after perusal by P.W.D. Fin. and Legal.

mm 14.8.52 — AV 14/8/52

P.W
Fin
Legal (Opinion)

70163

P.W.D. (Cs 2) — Health No. 2385434/52 — 20.8.52

To A.D.F.

May be perused and passed on to Finance

BV 23/8/52 — VDM 26.8.52 — Fin

Pwno 70163
G/52-1
26.8.52

Finance (Exp C)

May be perused and passed on to Legal (Opinions).

63623-A
Ee

BV 30.8.52 — Mv 30/8/52 — DDR 30/8/52 — Legal (Opns)

Legal (Opinion)
No. 63623-A-Eqy
30.8.52

Legal (Opns) Deptt

Seen in Legal

SS 5.9.52 — B/5.9 — J.S

ASSISTANT SECRETARY 14123 4 SEP 1952 LEGAL DEPARTMENT

H — Health

Health (H2)

Legal L.O. 14123/52-1
5.9.52

The papers may now be filed with the G.O. No. 2213 H dt. 10.7.52.

SS 11.9.52 — mm 11/9/52 — AV 12/9/52

ASSISTANT SECRETARY 42214 SEP 1952 HEALTH

Ext C

Health Dept H(H2)

Suit. ~~Kozhikode~~. Mangalore (S. Kanara Dt.) Owner of the DTO's residence. Suit filed before the Rent Controller.

Defence.

From the DTOs. Nr. 96699 W/57 g 14.6.52.

Under the scheme for the construction of a new headquarters hospital at Mangalore, the DTO's office has to be demolished and on that site the new ~~office~~ out patients block is to be constructed with reference to this, the DTO shifted his office on 6.5.11, to a portion of his residence which is a pre-war rented building with the permission of the DTO. The owner of the building has filed a ~~suit~~ petition before the rent controller for enhanced rent on the plea that the office has been located in the building which was rented out to the DTO. for residential purposes. The office has since been shifted to another building. The DTO has asked for permission to engage the Govt. Pleader to defend the case and the DTO recommends it.

A draft order is submitted for approval. Legal and Fin may see

MM
23/6/52

VR
25/6/52

SRK
26.6.52

Legal / Fin Legal (Opinion) Dept

Seen in Legal

B
27.6

Health No. Nr. 27313 H/52-1
26.6.52.

ASSISTANT SECRETARY 10113 27 NOV 1952 LEGAL DEPARTMENT

ASSISTANT SECRETARY 31240 9 JUL 1952 HEALTH DEPARTMENT

Finance / Exp. C

~~Put up with the note of Health Dept above~~

The draft order below may be accepted.

Legal U.O. 10113/52-1

30 6.52

GOVERNMENT SECRETARIAT 146295 5 JUL 1952

5.7.52

5.7.52

Stone
9-7-52